

BALTIMORE SCIENCE
FICTION SOCIETY, INC.

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IN THE

vs.

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MARYLAND TAX COURT

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STATE DEPARTMENT OF
ASSESSMENTS AND TAXATION

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No. 02-MI-BA-0246

MEMORANDUM OF GROUNDS FOR DECISION

I. Procedural History and Background

This case is an appeal by Baltimore Science Fiction Society, Inc. (BSFS) from the State Department of Assessments and Taxation's (the State's) denial of BSFS's request for tax exempt status for the 2001/02 tax year. The issue is whether BSFS's property is "necessary for and actually used exclusively for" its stated educational purpose as required under the first part of the two-pronged test for exemption articulated in Section 7-202 of the Tax-Property Article. After considering the evidence, this Court finds that BSFS is entitled to a property tax exemption.

BSFS is a not-for-profit corporation organized "to promote the cultural, literary and educational advancement of science fiction and fantasy in the community at large and to promote public goodwill toward the science fiction community." In the promotion of its purpose, BSFS, among other activities, participates in the regional Baltimore Science Fantasy Conference (Balticon), organizes writing contests such as the Compton Crook Award, provides writing workshops and seminars, raises funds and maintains a lending library. Members of BSFS pay annual dues. Non-members are allowed to use the library as well as attend all of BSFS's activities. However, it is not usual for the public to visit the library or attend meetings. The organization is run entirely by volunteers, who donate their time and/or money.

The subject property is a two-story row house owned by BSFS and allegedly used for all of its activities. Currently, 20-25% of the building space is used for storage of ancillary supplies and other items necessary for the conduction of BSFS's activities. The library also constitutes approximately 20-25% of the building area. More than 30% of the space is used strictly for group functions such as workshops and meetings. The building is only open on Saturdays, Sundays and Wednesday evenings. During these times, the public can access the building to visit the library or to participate in other BSFS activities.

Section 7-202(b) of the Tax-Property Article provides that a property is exempt from tax if it meets both a use and an ownership requirement. The use requirement articulated in Section 7-202(b)(1)(i) in pertinent part provides that "property is not subject to property tax if the property is necessary for and actually used exclusively for a charitable or educational purpose to promote the general welfare of the people of the State." The ownership requirement also specifically extends this privilege to non-profit literary organizations. Section 7-202(b)(1)(ii)(2) of the Tax-Property Article. Section 7-101 further provides that property tax exemption statutes are to be strictly construed.

In determining whether BSFS's use of the property qualifies for a tax exemption, we first discuss if BSFS encompasses an "educational" purpose. Next, we analyze whether the particular use of the subject property is both necessary and actually used exclusively to further BSFS's educational purpose. Finally, a consideration of "strict construction" is required.

II. BSFS's "Educational Purpose"

In deciding whether BSFS satisfies the use requirement, BSFS must first demonstrate that it supports an "educational" purpose subjecting it to Section 7-202 in general. BSFS argues that it encompasses an educational purpose in the broad meaning of that word. It also argues that the

blissing of the state and classroom instruction are not pre-requisites for an exemption. See generally *Friends School v. Supervisor of Assessments of Baltimore City*, 314 Md. 194, 199 (1988) (finding that the Tax Court erred in requiring proof of academic activities on the subject property as an absolute prerequisite to the grant of an exemption). BSFS's position finds some support from the dissent in *Ladies Literary Club v. City of Grand Rapids*, which, cited by the State in its favor as a key case involving similar facts, opted for a more expansive interpretation of "educational." 409 Mich. 748, 761-62 (1980) (Williams, J., dissenting). The dissenting judge there found "education," as more broadly defined in Webster's New Collegiate Dictionary, to encompass "cultural" activities such as museum trips and lectures on antiques. *Id.* (citing to *Webster's New Collegiate Dictionary* 261 (2d ed. 1956)).

On the other hand, the State has adopted a narrower interpretation and contends that BSFS does not have an educational purpose because it does not offer "systematic instruction" and its activities do not tie into the State's educational program. As such, the State avers that BSFS resembles more closely a social or hobby club. The "systematic instruction" language, as it was first introduced in this context in case law, was Black's Law Dictionary's definition of "educational purposes." *Comptroller of the Treasury v. Maryland State Bar*, 314 Md. 655, 673 (1989) (citing *Black's Law Dictionary* 461 (5th ed. 1979)). *Maryland State Bar* and other cases following it, however, failed to discuss specifically what "systematic instruction" entails.

For resolution, a strict construction of the statute requires that language must be given its usual and properly understood meaning. *Maryland State Bar*, 314 Md. at 671 (citing *State Tax Commission of Maryland v. Whitehall Foundation, Inc.*, 214 Md. 316, 320 (1957)); *Supervisor of Assessments of Baltimore County v. Trustees of Bosley Methodist Church Graveyard*, 293 Md. 208 (1982); *Perdue, Inc. v. State Dept of Assessments & Taxation*, 264 Md. 228 (1972).

Construction must also be fair as to give expression to legislative intent and purpose. *Whitehall*, 214 Md. at 317-25.

This Court feels that a standard English dictionary offers a more “usual and proper understanding” in this case given Black’s Law Dictionary’s unclear definition of “systematic instruction.” It appears to us that the usual meaning of education involves a subjective element as ordinary meanings are influenced by the extent we value activities that once had been clearly recreational. We find that the standard English definition of “education” would not be an unfair, forced, strained or unnatural construction of the language. We rest this determination in part on BSFS’s argument that a literary club would have to become a language school to meet the obscure “systematic instruction” standard. Most importantly, however, we acknowledge Maryland legislature’s intent to promote literacy in Baltimore as evidenced by the slogan “The City That Reads” as well as the explicit statutory language providing the exemption to literary organizations.

III. BSFS’s Necessary Use of Property

The use of the property must promote BSFS’s educational purpose to qualify for an exemption. To satisfy the use requirements for a tax exemption, the statute first requires that the property be “necessary” for the organization’s educational purpose. The courts have interpreted “necessary” to mean reasonably necessary. *Friends School*, 314 Md. at 201 n. 3. In *Friends School*, the court held that the superintendent’s residence located on private school grounds could qualify for a tax exemption if the use of the property is essential to the maintenance and “an important component in carrying out the educational function of the school.” *Id.* at 196-97. Exemption is allowed only to the extent that the property is reasonably required for the convenient and practical uses of the institution in furthering its charitable or educational purpose.

The Mayor and City Council of Baltimore v. The Grand Lodge of Ancient Free and Accepted Masons, 60 Md. 280, 283 (1883). Here, BSFS’s property is used for the storage of items, including those for Balticon, maintenance of a science-fiction lending library and as function space for club activities. These are clearly reasonably necessary, convenient and practical uses of the property to support BSFS’s purpose of promoting science fiction and fantasy. BSFS’s use of its current property is also identical to prior use of rented space.

IV. BSFS’s Actual and Exclusive Use of Property

In addition to the necessary use requirement, the statute also requires that the property be “actually used exclusively for a charitable or educational purpose.” The courts have interpreted this requirement to mean actual and present use. *Friends School*, 614 Md. at 201 n. 3 (citing *Trustees of Bosley Methodist Church Graveyard*, 296 Md. at 215-16). Furthermore, the property must be primarily used to further the charitable or educational purpose. *Id.* (citing *Trustees of Bosley Methodist Church Graveyard*, 296 Md. at 215 n.5; *Lodge #817, Trustees Benevolent and Protective Order of Elks v. Supervisor of Assessments of Wicomico County, Maryland*, 292 Md. 533, 541 (1982)). While this means that an incidental or occasional use of the property unrelated to the organization’s purpose is allowed, *Friends School*, 614 Md. at 201 n. 3, an “integral” use of a property may not always be considered as necessary or exclusively used for the exempt organization’s purpose. *Supervisor of Assessments of Montgomery County v. Asbury Methodist Home, Inc.*, 313 Md. 614, 631 n.9 (1988). In sum, the use of the property must tie to the exempt organization’s purpose. *Lodge #817 Order of Elks*, 292 Md. at 537. Property which is used for charitable events, as a source of revenue, or for the enjoyment of both members and non-members may be indicative of a connection between the exempt organization’s purpose and the required use for tax exemption purposes. See *id.* at 539.

The crux of the issue before this Court is whether the use of BSFS's property satisfies this actual and exclusive use requirement. The State argues that BSFS should not benefit from a tax exemption because the property in question more closely resembles that of a membership organization. The State also observed that (1) the building is usually only open on Saturdays, Sundays and Wednesday evenings; (2) BSFS's activities, such as Balticon and the workshops, are either held off BSFS's premises or infrequently; (3) there are typically only two workshops annually; (4) reading events are only held a couple of times each year depending on the availability of participants; (5) there are two meetings each month, one of which is for administrative purposes; (6) while welcomed, it is not likely for the public to attend a meeting or use the lending library; (7) in relation to the various contests sponsored by BSFS, the building is used as a collection and distribution center for submitted writings; and (8) the existence of BSFS, its property and activities are not widely known to the public.

After considering the State's observations, we find the extent of the use of BSFS's property to be actual and exclusive under Section 7-202(b)(1)(i). First, although a property's infrequent use poses a problem in determining whether it is exclusively used for a particular purpose or not, frequency of use is not a determinative factor. The statute merely requires that the subject property be exclusively used and not both exclusively *and* frequently used. Thus, in conformity with the statutory language, what matters is whether the building is used solely to promote the organization's educational purpose when the property is open.

Although BSFS's property remains closed on most days of the week, the property, when open, is exclusively used to promote BSFS's educational purpose. This situation is analogous to, say, the exclusive use of a car to run family errands or a television solely used to provide personal entertainment. In these cases, even if the car or television were only used for one hour

each day, we would probably not hesitate to conclude that they are only used to serve a particular purpose. As such, we find no reason to view BSFS's use of the subject property any differently.

Furthermore, cases that have discussed whether the use of a property qualifies as necessary and exclusive use raised the issue because the property was rented out or put to other use unrelated to the organization's purpose. See e.g. *Asbury Methodist Home, Inc.*, 313 Md. at 635-36 (finding that a charitable corporation's provision of moderate income housing, which comes with life care guarantee, to the elderly does not deserve an exemption because of the significant financial requirements imposed on applicants and the preliminary medical and financial screening required of the applicants); *The Grand Lodge of Ancient Free and Accepted Masons*, 60 Md. at 283 (finding that a temple that rented part of its property out as storerooms is not entitled to an exemption because that part of the property is apparently not necessary to promote the organization's purpose). Here, BSFS's property is either open to hold activities that would promote the organization's educational purpose or it is closed, in which case it is simply idle. The idle property was not put to any other use for a different purpose or used to generate revenue.

Second, no part of BSFS's property is used for a purpose other than the promotion of literature because the community's interest in science fiction and fantasy are potentially generated through activities held in the building space reserved for club functions and the lending library. The items that are in storage in the building are also crucial to BSFS's participation in Balticon and directly help to promote literature. Because of the direct role that the contents of the storage play in furthering the educational purpose of BSFS, we are not fully convinced by the State's argument that the storage space fails to promote the organization's

purpose. Rather, this Court takes the view that the important character of the stored items in promoting BSFS's purpose necessarily extends to the space required for their safekeeping.

Third, despite BSFS's modest level of recognition in the community, it has successfully contributed to improving the general welfare of Marylanders by promoting literacy. The State argued that BSFS failed to provide a substantial public benefit because most of the public is not aware of BSFS's existence and, even if it did, it is not usual for non-members to make use of what BSFS has to offer. However, if the city's public library is only frequented by a small percentage of the community, there is no doubt that the public would still acknowledge the benefits and benevolent purpose of a public library's existence. Thus, BSFS's existence and use of its property to further its educational purpose should be viewed similarly.

Furthermore, in *Reisterstown Jazz Ensemble, Inc. v. State Department of Assessments and Taxation*, a case cited by the State, the court there opined that “[p]ublic benefit can be affected by the size of the organization. It is more difficult for small groups to achieve the same impact on the public as a large group.” TP-C 970. *Reisterstown Jazz Ensemble* also held that a particular jazz club did not promote the general welfare of the people of the State because its contact “with the public is minimal even for a group of [its] size, and there is little outreach to attract new members.” *Id.*

Here, we find that BSFS has provided a substantial benefit to the public and successfully attracted new readers relative to the group's modest size of active members and volunteers. In addition to the public's free access to BSFS's activities and library, BSFS also touches the lives of a group of promising writers and young authors at least twice its size. As BSFS testified, the Maryland Young Writers Contest draws 60 to 75 entries from high schools all over Maryland. The Compton Crook Award, which has gained national reputation and used by authors to boost

their credentials, receives 60 to 150 entries. BSFS, in an on-going effort, has also raised funds to bring almost 1,000 books to schoolchildren, who otherwise would have none. Eighteen hundred to 2,500 visitors consisting of authors, artists, scientists and publishers attend Balticon each year. Letters from other literary organizations also confirm BSFS's contribution and dedication to promoting its purpose.

V. Strict Construction

Finally, this Court notes that its analysis is consistent with the strict construction rule set forth in Section 7-101. The uniformity established by the strict construction rule does not forbid the creation of reasonable exemptions in furtherance of the public good if an exemption would not extend beyond the limits imposed by the plain terms of the statute. *Mayor and City Council of Havre de Grace v. The Havre de Grace and Perryville Bridge Company*, 145 Md. 491, 497-98 (1924). Here, this Court has relied on the plain language of the statute in analyzing all elements relevant to the determination of this case and our position is a fair construction of the exemption statute given the Maryland legislature's intention to promote literacy. Furthermore, the plain terms of the statute, the explicit reference to "literary organizations," also supports the grant of an exemption.

VI. Conclusion

Accordingly, after careful examination of the particular use of the property, we are compelled to grant an exemption to BSFS and to reverse the decision of the Department.. We find that BSFS's use of the subject property for storage, activities and the maintenance of a library are both necessary and actually used exclusively to promote literacy in the community as well as the general welfare of Marylanders. The record indicates that the subject property has never been used in furtherance of a different purpose or to generate revenue. Every type of use

of the property was aimed at ultimately promoting literature and successfully contributed to this cause. The facts and the law support the tax exempt status of the subject property.